WASHINGTON STATE CRIMINAL JUSTICE TRAINING COMMISSION

Law Enforcement Digest

June 1998

HONOR ROLL

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473rd Session, Basic Law Enforcement Academy - January 13th through April 8th, 1998

President:	Troy E. Olmsted - King County Sheriff's Office
Best Overall:	Andy R. Conner - King County Sheriff's Office
Best Academic:	Andy R. Conner - King County Sheriff's Office
Best Firearms:	Christopher N. Nygren - University of Washington Police Department
Tac Officer:	Special Agent Gary Drumheller - Washington State Gambling Commission

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475rth Session, Basic Law Enforcement Academy - February 11th through May 6th, 1998

President:	Bruce W. Johnston - Pierce County Sheriff's Office
Best Overall:	Richard N. Folden - Pierce County Sheriff's Office
Best Academic:	Richard N. Folden - Pierce County Sheriff's Office
Best Firearms:	Scott A. Rankin - Kent Police Department
Tac Officer:	J.R. Hall - King County Sheriff's Office

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Corrections Officer Academy - Class 268 - March 9th through April 3rd, 1998

Highest Overall:	David W. H. Lau - Washington Corrections Center
Highest Academic:	Joseph V. Gatchell - Washington Corrections Center
Highest Practical Test:	David W. H. Lau - Washington Corrections Center
Highest in Mock Scenes:	David W. H. Lau - Washington Corrections Center
Highest Defensive Tactics:	David W. H. Lau - Washington Corrections Center

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Corrections Officer Academy - Class 269 - March 30th through April 24th, 1998

Highest Overall:	Joshua M. Rees - Clallam Bay Corrections Center
Highest Academic:	Lenora A. Tidler - Airway Heights Correctional Center
Highest Practical Test:	Margaret M. Gilbert - Twin Rivers Corrections Center
	Matthew B. Hendricks - McNeil Island Corrections Center
	Ryan A. McCauley - Washington State Penitentiary
Highest in Mock Scenes:	Eric W. Kindvall - Larch Corrections Center
Highest Defensive Tactics:	Jeffrey T. Zaro - Yakima Police Department

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Corrections Officer Academy - Class 270 - March 30th through April 24th, 1998

Highest Overall:	Sandy M. Smith - Pine Lodge Pre-Release
Highest Academic:	Sandy M. Smith - Pine Lodge Pre-Release
Highest Practical Test:	LouAnne F. Anderson - Ahtanum View Corrections Complex
	Sandy M. Smith - Pine Lodge Pre-Release
Highest in Mock Scenes:	LouAnne F. Anderson - Ahtanum View Corrections Complex
	Kavin Haines - Washington State Penitentiary
Highest Defensive Tactics:	Daniel M. Snow - Lynnwood Police Department

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476th Session, Spokane - Basic Law Enforcement Academy - February 12th through May 5th, 1998

Highest Achievement in Scholarship:	Douglas S. Strosahl - Spokane Police Department
Highest Achievement in Night Mock Scenes:	Paul A. Watson - Spokane Police Department
Outstanding Officer:	Matthew S. Ruch - Lincoln County Sheriff's Office
Highest Achievement in Pistol Marksmanship:	John F. Nowels - Spokane County Sheriff's Office
Best Overall Firearms:	Shawn C. Hause - Spokane County Sheriff's Office

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1998 WASHINGTON LEGISLATIVE UPDATE – PART ONE

LED EDITOR'S INTRODUCTORY NOTE: This is Part One of what we expect to be a two-part update of the 1998 Washington State legislative enactments of interest to law enforcement. We believe that we have included in Part One most of the significant 1998 enactments of special interest to law enforcement. Consistent with past practice, our update will only selectively digest sentencing, tax, budget, worker benefits, and retirement legislation. Part Two next month will provide: (A) follow-up notes on Part One enactments; (B) information regarding any enactments of interest that were not digested in Part One; and (C) an index of the 1998 enactments addressed in Parts One and Two. There will probably also be follow-up entries in LED's in the months that follow.

We have tried to incorporate RCW references in most of our entries, but where new sections or chapters are created, the State Code Reviser must assign appropriate code numbers, a process that likely will not be completed until early fall. As always, we remind our readers that any legal interpretations that we express in the LED do not necessarily reflect the views of the Attorney General's Office or of the Criminal Justice Training Commission.

ASSAULT ON BUS DRIVER

CHAPTER 94 (SB 5499) Effective Date: June 11, 1998

Amends subsection (1)(b) and (1)(c) of RCW 9A.36.031 to expand "assault 3" protection of transit and school bus drivers. Assaults on such drivers will now be class C felonies under that section whenever the drivers are "performing…official duties at the time of the assault."

TOBACCO POSSESSION BY MINOR

CHAPTER 133 (2ESHB 1746) Effective Date: June 11, 1998

Amends RCW 70.155.080 in the following manner:

> (1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community service, or both. The court may also require participation in a smoking cessation program ((~~, or both~~)). This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.
>
> (2) Municipal and district courts within the state have jurisdiction for enforcement of this section.

COMPUTER HARDWARE TRADES, EXCHANGES NOT WITH ORIGINAL SELLER

CHAPTER 134 (SHB 1829) Effective Date: June 11, 1998

Adds new sections **to chapter 62A.2 RCW**, Washington's commercial code, to address fencing of stolen computer hardware. Section 1 requires that retail establishments taking trade-ins or exchanges of computer hardware: (a) keep certain records on the transactions for one year, and (b) open the records to inspection by state and local law enforcement officers. Section 2 requires, among other things, that retailers with good cause to believe that such computer hardware has been lost or stolen are to report their beliefs to local law enforcement.

Section 3 provides:

> It is a gross misdemeanor under chapter 9A.20 RCW for:
>
> (1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware that is received as a trade-in or in exchange on the purchase of other computer hardware of greater value. In addition a retailer shall not accept any computer hardware as a trade-in or in exchange on the purchase of other computer hardware of grater value where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the computer hardware has been removed, altered, or obliterated;
>
> (2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter; or
>
> (3) Any person to knowingly violate any other provision of chapter. . ., Laws of 1998 (this act).

Section 4 provides:

> Sections 1 through 3 of this act do not apply to trade-in or exchange of computers, or computer hardware, between consumers and retailers, or their branch facilities, when the computer or computer hardware was originally purchased from that same retailer.

ADDRESS CONFIDENTIALITY: SEXUAL ASSAULT VICTIMS

CHAPTER 138 (SHB 2351) Effective Date: June 11, 1998

Amends provisions of RCW chapter 40.24 to extend protection of the address confidentiality program to victims of sexual assault. Existing law had provided this protection only to domestic violence victims through the Secretary of State's office.

HIGHER EDUCATION CAMPUS SECURITY – SEX OFFENDER REGISTRATION

CHAPTER 139 (SHB 2368) Effective Date: June 11, 1998

Amends RCW 9A.44.130(1) by adding the following requirement as to offenders who are required under that statute to register with their county sheriff of residence:

> In addition, any such adult or juvenile who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution. Persons required to register under this section who are enrolled in a public or private institution o higher education on the effective date of this act must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

Also adds a new section to chapter 9A.44 RCW to require that WSP "notify registered sex and kidnapping offenders of any change to the registration requirement."

FISH AND WILDLIFE CODE OVERHAUL

CHAPTER 190 (ESSB 6328) Effective Date: June 11, 1998

Many enforcement provisions of the fish and wildlife laws are revised and recodified. This act is 84 pages in length, and we will not attempt to summarize the changes, either in terms of the renumbering or in terms of the substantive changes.

FISH AND WILDLIFE LICENSES

CHAPTER 191 (SSSB 6330) Effective Date: June 11, 1998
(with certain exceptions)

Many licensing provisions of the fish and wildlife laws are revised and recodified. This act is 25 pages in length, and we will not attempt to summarize the changes under this act.

SUSPENDED, REVOKED DRIVER VEHICLE IMPOUND PER LOCAL ORDINANCE OR STATE AGENCY RULE; MISCELLANEOUS OTHER TITLE 46 AMENDMENTS

CHAPTER 203 (ESHB 1221) Effective Date: June 11, 1998

I. Introductory note

This 1998 enactment does several things. First, it authorizes local jurisdictions to adopt ordinances (and, in parallel fashion, it authorizes state agencies to adopt rules) creating special impoundment procedures for motor vehicles driven by persons arrested for driving while suspended (RCW 46.20.342) or revoked (RCW 46.20.420). Like the remainder of this enactment, the "effective date" of the ordinance-enabling (and rule-enabling) legislation is June 11, 1998. However, the special impound procedures in relation to DWLS/R drivers require implementing local ordinances (or implementing state agency rules). A number of legal and logistical questions must be answered before such ordinances (and state agency rules) can be put in place.

The City Attorney for the City of Seattle has taken the lead on drafting a local "model" ordinance and coordinating a local plan. At LED deadline for the June 1998 issue, it appeared that an implementing model ordinance would **not** be ready prior to early fall of this year.

In addition to the enabling provisions on DWLS/R impound, this 1998 enactment makes various miscellaneous changes in RCW Title 46 relating to abandoned vehicles, transfer of MV ownership, perfection of MV security interests, and the offense of allowing unlicensed persons to drive. The latter miscellaneous changes, addressed in greater detail in Part III below, will not require an implementing ordinance, so they can be enforced and administered as of the effective date of the legislation: June 11, 1998.

II. Local ordinances and state agency rules for impound of DWLS/R MV's

Section 1 of this enactment is a "purpose" section. It gives a detailed explanation of the extent and nature of the scofflaw problem with respect to suspended and revoked drivers. Section 1 goes on to explain that the impound sanction which will be authorized under ordinances and state agency rules adopted pursuant to the act are against the vehicle (regardless of who owns the vehicle), as well as against the driver. The sanction is intended to get the vehicle off the highways for a period of time, both to reduce risk to the public and to deter violations. When this purpose section is incorporated in a local ordinance (or state agency rule) consistent with the enabling provisions elsewhere in the legislation, it should be very difficult for anyone to successfully argue the application of State v. Reynoso, 41 Wn. App. 113 (Div. III, 1985) to the newly adopted ordinances or state agency rules.

Reynoso is a 1985 Court of Appeals decision which held under a predecessor to the existing impound statute that a driver arrested for DWLS/R generally must be given the opportunity to suggest reasonable alternatives to impoundment of the vehicle. [See brief discussion of Reynoso in the Feb. '98 LED at pages 19-20.] The Reynoso decision's analysis was a hybrid of statutory and constitutional interpretation which was grounded in part on a conclusion that the Legislature's attention was focused only on the driver's immediate circumstances. The Reynoso Court held

that the Legislature had not intended for police to impound vehicles in the DWLS/R setting without consideration of reasonable alternatives. It will be difficult to support a similar interpretation against a mandatory DWLS/R MV impound ordinance adopted with express consideration of chapter 203's statement of legislative purpose.

Section 4 of the 1998 enactment amends RCW 46.55.113 to enable local jurisdictions to adopt ordinances and to enable state agencies to adopt rules that subject vehicles to impoundment when their drivers are arrested for DWLS/R.

Section 5 amends RCW 46.55.120 to address various matters to be covered under the authorized ordinances and state agency rules. Among the matters addressed are: varying lengths of the impound period depending on the type of DWLS/R offense; release procedures (including the obligation of owner-violators to pay court fines, penalties and forfeitures; and the obligation of any person obtaining release of MV to pay towing, removal, and storage fees); municipal court jurisdiction over impound review cases; and qualified good faith immunity for law enforcement-directed DWLS/R impounds which are based on DOL information.

III. Amendments to miscellaneous other RCW Title 46 provisions

As noted in introductory note above in Part I, this Act also amends several other RCW Title 46 provisions, effective June 11, 1998. ... RCW 46.55.105's provisions relating to abandoned vehicles are amended to address the qualified responsibility (for the costs of removal/storage/disposal) of registered owners who: (a) file a theft report on the vehicle, or (b) file a report of sale or transfer. ...The definition of "abandoned vehicle" at RCW 46.55.010 is amended to provide that the vehicle is deemed to be "abandoned" only after being in a tow operator's possession for 120 consecutive hours, not 96 consecutive hours, as under the current law. ...Minor changes are made to RCW 46.12.095 (security interests), and RCW 46.12.101 (transfer of ownership). ... A new section is added to chapter 46.12 to allow, under limited circumstances set out in the statute, the perfection of a security interest in a vehicle (by dealers and new secured parties) through a "transitional ownership record" to be submitted to DOL in place of a certificate of ownership.

Finally, the Legislature addresses overlapping proscriptions on knowingly permitting an unlicensed/unauthorized person to drive a car. The **infraction** at RCW 46.20.344 (owner of vehicle or person in control of vehicle knowingly permitting unauthorized person to drive such vehicle on highway) is repealed. This leaves in place without change the **misdemeanor** at RCW 46.16.011 (registered owner knowingly permitting a person to drive the owner's vehicle when that other person is "unauthorized to do so under the laws of this state").

DRIVING RECORDS DESTRUCTION

CHAPTER 204 (EHB 1254) Effective Date: June 11, 1998

Amends RCW 46.52.100 to require that courts permanently maintain records of DUI and physical control convictions.

FRESH PURSUIT OF SERIOUS TRAFFIC OFFENDERS FROM OTHER STATES

CHAPTER 205 (HB 2500) Effective Date: June 11, 1998

Amends RCW 10.89.010 and 10.89.050 to authorize officers from other states (presumably Oregon and Idaho) to enter this state in fresh pursuit and to arrest drivers on whom there is probable cause to believe a violation of the other states' laws on DWI, DUI, driving while impaired or reckless driving.

DUI PENALTIES – ELECTRONIC HOME MONITORING

CHAPTER 206 (SHB 2885) Effective Date: June 11, 1998

Amends RCW 46.61.5055 to authorize electronic home monitoring in lieu of mandatory minimum sentencing in certain DUI and physical control sentencing circumstances.

DUI PENALTIES – RECIDIVISM UNDER SELECT STATUTES

CHAPTER 207 (2SHB 3070) Effective Date: January 1, 1999

Amends RCW 46.61.5055, 46.61.5058, 46.20.3101 and 46.20.391 to change the recidivism-related time periods in these sections from "five" to "seven" years. Amends RCW 46.61.260 to require that DOL permanently maintain records on deferred prosecutions.

DUI DEFERRED PROSECUTION LIMIT

CHAPTER 208 (2SHB 3089) Effective Date: January 1, 1999

Amends chapter 10.05. RCW to restrict deferred prosecution for traffic-related offenses (including DUI) to once in a lifetime.

DUI LICENSE SUSPENSION, PROBATION

CHAPTER 209 (ESB 6142) Effective Date: January 1, 1999

Amends various implied consent and DUI-related provisions to eliminate eligibility of certain violators for probationary licenses.

DUI IGNITION INTERLOCK

CHAPTER 210 (ESSB 6165) Effective Date: January 1, 1999

Amends RCW 46.20.720 to require that courts sentencing certain DUI and physical control offenders require ignition interlock devices unless such devices are not readily available in the local area; time periods vary depending on recidivism factors. Violators so sentenced must pay for the devices themselves.

DUI PENALTIES IN SELECT STATUTES

CHAPTER 211 (ESSB 6166) Effective Date: January 1, 1999

Amends RCW 46.61.520 and RCW 9.94A.310 to enhance sentencing in vehicular homicide cases where the person has prior convictions for DUI and physical control.

Adds a new section to chapter 46.61 RCW to require that criminal history be verified in certain situations involving sentencing, deferred prosecution and dismissal of charges.

DUI – FEE ASSESSMENTS FOR CERTAIN LICENSE RENEWALS

CHAPTER 212 (ESSB 6187) Effective Date: June 11, 1998

Creates a state "impaired driving safety account" to fund projects to reduce impaired driving. The account will received fees collected under the DOL licensing provisions at RCW 46.20.311 which assesses a $150 fee for re-issuance of a driver's license to those whose licenses have been suspended or revoked for certain alcohol-related conduct.

DUI, BUI .08 INTOXICATION LEVEL

CHAPTER 213 (ESB 6257) Effective Date: January 1, 1999

Changes threshold alcohol concentration intoxication level for driving MV under the influence (RCW 46.61.502), physical control of MV (RCW 46.61.504), and of boating under the influence (RCW 88.12.025). The criminal blood alcohol level for all of these offenses becomes .08% BAC effective January 1, 1999.

DUI PENALTIES – ELECTRONIC HOME MONITORING

CHAPTER 214 (E2SSB 6293) Effective Date: January 1, 1999

Adds periods of electronic home monitoring to the mandatory sentencing provisions of RCW 46.61.5055 relating to DUI and physical control offenses. The monitoring devices are to be paid for by the violator.

Also adds a new section to chapter 46.61 RCW providing as follows:

> (1) A defendant who is arrested for an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a magistrate within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of arrest.
>
> (2) A defendant who is charged by citation, complaint or information with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not arrested, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.
>
> (3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

DUI PENALTIES RELATED TO PASSENGER IN MV

CHAPTER 215 (ESSB 6408) Effective Date: June 11, 1998

Amends RCW 46.61.5055 to require that courts sentencing DUI and physical control violators consider the presence of passengers in the vehicle at the time of the offenses.

PEN REGISTER, TRAP AND TRACE

CHAPTER 217 (SSB 1072) Effective Date: June 11, 1998

LED EDITOR'S INTRODUCTORY NOTE: With permission from the author, we have adapted the following outline addressing certain aspects of pen register, trap and trace devices from a comprehensive "Electronic Surveillance in Washington" outline by Pat Sainsbury, Chief Deputy Prosecuting Attorney, Fraud Division, King County Prosecuting Attorney's Office. Part One of this LED entry provides background information, while Part Two of the entry addresses the 1998 amendment to chapter 9.73 under chapter 217, Laws of 1998. Questions regarding implementation of the amendments may be addressed to Mr. Sainsbury at (206) 296-9078 or E mail address [pat.sainsbury@metrokc.gov]. Mr. Sainsbury informs us that he expects to deliver a set of forms to the offices of the Washington Association of Prosecuting Attorneys in Olympia by the effective date of June 11, 1998.

I. **Background Information**

A. Technology (Ordinary Telephone Call)

When someone makes a telephone call, two "messages" are sent to the telephone company's switching equipment. The numbers dialed are used to place the call and to make any record needed for billing purposes. These numbers can be captured by use of a pen register attached to a particular telephone line. The pen register will show the date and time the telephone is taken off the hook, all numbers and symbols dialed, and the date and time the telephone is placed back on the hook. The second set of numbers sent to the telephone company switching equipment are the numbers which identify the telephone making the call. This feature is the basis of the called party's ability to identify the calling telephone number via Caller ID or the use of the "*57" feature. This information can be gathered for every call to a particular telephone line by a trap and trace device. In most cases in King County, this "device" is actually a special program executed by the telephone company's computer switching equipment.

B. Technology (Cell Phone)

When someone makes a cell phone call, two "messages" are sent to the telephone company's switching equipment. The numbers dialed are used to place the call and to make the record needed for billing purposes. These numbers can be obtained by a search warrant or subpoena directed to the cell phone company. The second set of numbers sent to the telephone company switching equipment are the numbers which identify the telephone making the call. This feature is the basis of the called party's ability to identify the calling telephone number via Caller ID or the

use of the "*57" feature. This information can be gathered for every call to a particular telephone line by a trap and trace device. In most cases in King County, this "device" is actually a special program executed by the telephone company's computer switching equipment.

The number identifying the cell phone also can be used to locate the phone. The cell phone provider can determine the location of the cell being used when the phone is being used to call or receive a call. There are devices which can then determine the exact location of the phone, once the general area of the cell is known.

C. Uses. Pen register/trap and trace can be critical investigative tools:

1. To locate people in kidnapping/runaway/extortion cases and to provide leads to identify and apprehend criminals in those cases.
2. To locate defendants and missing children in custodial interference cases.
3. To locate both charged and uncharged fugitives.
4. To identify and locate potential suspects or witnesses.
5. To show telephone links among co-conspirators.
6. To identify a computer hacker and to build a case.
7. To provide important investigative leads in an investigation. For a good example, see State v. Gunwall, 106 Wn.2d 54 (1986).
8. Although the telephone companies and police have a regular way of dealing with the typical threatening or harassing telephone calls, these devices can be employed in egregious cases.

D. Federal law

Federal statutes permit federal peace officers to use pen registers and devices for trap and trace under certain circumstances where the use of such devices would not be permitted under Washington law, chapter 9.73 RCW, even as amended under the 1998 enactment outlined in Part II below. The electronic surveillance activities of federal officers acting in the state of Washington in a manner authorized by federal law, but inconsistent with Washington law, are not illegal under Washington law. However, the fruits of federal officers' electronic surveillance in the latter circumstance are generally inadmissible in Washington state criminal trials, even where the federal officers are acting entirely independently of state or local Washington officers. On the other hand, where there is no evidence of federal-state collusion or intent to circumvent Washington law, the fruits of federal officers' federally-authorized (but Washington-proscribed) surveillance efforts-- including federal pen register, trap and trace results-- generally may be used by Washington law enforcement agencies for the limited purpose of establishing probable cause for search warrants or for electronic surveillance court orders under chapter 9.73 RCW. See State v. O'Neill, 103 Wn.2d 853 (1985).

E. Pre-existing Washington Law Allowing Some Pen Register, Trap and Trace.

1. The telephone company continues to have authority to install these devices without a warrant to protect itself and its customers from hackers, toll fraud, extortionate calls, harassing calls, etc. RCW 9.73.070; State v. Riley, 121 Wn.2d 22 (1993). Law enforcement usually can obtain this information from the telephone company with a search warrant or subpoena if there is a criminal investigation.

2. Caller ID/*57. Whenever possible, the preferred way for police to accomplish a trap and trace is to use Caller ID and/or "*57", called a customer-originated trace. Caller ID or *57 can be used when the person receiving the call is cooperating with law enforcement. To use *57, break the connection with the caller you want to trace, obtain a dial tone, dial *57, and follow the directions given on the telephone in response to *57. You must dial *57 before making or receiving another call. The calling number can be made available immediately, and subscriber information can be provided on an emergency basis, even for a non-published listing. For additional information, consult the U.S. WEST Law Enforcement Agency Guide. The Guide is in a light-blue notebook.

II. **New law under 1998 enactment amending chapter 9.73 RCW**

A. By Court Order: Only Superior Court Has Authority To Issue Court Order.

1. Application under oath by a law enforcement officer:

a. Identity of officer and officer's agency.
b. Statement that information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the agency. [Same as federal requirement.]
c. Showing of probable cause that device will lead to:
(1) "Obtaining evidence of a crime, contraband, fruits of crime, things criminally possessed, weapons, or other things by means of which a crime has been committed or reasonably appears about to be committed" or
(2) "Learning the location of a person who is unlawfully restrained reasonably believed to be a witness in a criminal investigation or for whose arrest there is probable cause."

2. Content of Court Order

a. Finding that information likely to be obtained is relevant to an ongoing criminal investigation.
b. Finding of probable cause that device will lead to obtaining evidence or location of person per 1,c, above.
c. State identity of telephone customers and suspect, if known.
d. State number and physical location of telephone, if known.
e. State offense being investigated.
f. Order may direct phone company to assist, if requested in application.
g. Order good for not to exceed sixty days.
h. Can be extended only under extraordinary circumstances:
(1) One extension with a showing that probability of success is higher than under the original application;
(2) Additional extensions only with a showing of "high probability" that information sought is "much more likely to be obtained" and "there are extraordinary circumstances such as direct and immediate danger of death or serious bodily injury to a law enforcement officer."
i. Secrecy: The order [and logically the application?] are sealed until otherwise ordered by the court, and telephone company employees may be directed not to disclose.
j. Practice tip: Order should also direct telephone company to provide subscriber information on all telephones identified by the pen register/trap and trace. The application should contain justification for this part of the order.

3. Telephone company must be reasonably compensated for its assistance.

4. Judges must file an annual report with the Administrator for the Courts.

B. Emergencies without a court order

1. Joint determination by law enforcement officer and prosecutor.
2. Reasonably determine probable cause to believe that there is an emergency threatening immediate danger of death or serious bodily injury.
3. There is not time using due diligence to obtain a court order, but there are grounds to obtain a court order.
4. Must obtain an order within 48 hours.
5. If no order within 48 hours, must stop using device when:
   a. Have obtained information needed;
   b. Judge denies application; or
   c. 48 hours has passed.
6. Knowing violation of emergency provisions is a gross misdemeanor.
7. Police must file a report with the Administrator for the Courts.

HOMICIDE, ASSAULT BY WATERCRAFT

CHAPTER 219 (HB 1165) Effective Date: June 11, 1998

Adds new sections to chapter 88.12 RCW to create two new crimes – "homicide by watercraft" and "assault by watercraft." These crimes are closely modeled on the motor vehicle crimes of vehicular homicide (RCW 46.61.520) and vehicular assault (RCW 46.61.522).

Also amends RCW 88.12.010 to exempt "sailboards" from the definition of "vessel."

SEX OFFENDER REGISTRATION

CHAPTER 220 (HB 1172) Effective Date: June 11, 1998

LED EDITOR'S NOTE: We have excerpted below [with bracketed LED edits] the significant pertinent parts of the legislature's final bill report on this 1998 enactment.

Background [regarding preexisting law and facts]:

In 1994, Congress passed the Jacob Wetterling Act, 42 U.S.C. Section 14071. The act requires states to establish a registration system for persons convicted of certain crimes against minors and persons convicted of sexually violent offenses. States are required to comply with the act or face an automatic 10 percent reduction in federal Byrne Formula Grant funding.

Washington was out of compliance with the Jacob Wetterling Act and was required to amend a number of its provisions covering the state's sex and kidnapping offender registration statute prior to the year 2000.

Summary [of 1998 enactment amending RCW 9A.44.130, 135, 140, and RCW 4.24.130, 550]:

The following [state] sex and kidnapping offender registration provisions are amended to comply with the federal Jacob Wetterling Act:

Offenders who are Residents of other States. Persons who have been convicted of a sex or kidnapping offense and who are residents of other states, but who are students, employed, or who carry on a vocation in Washington must register in Washington. "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit. "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

Offenders in Custody. At the time a sex or kidnapping offender is released from custody, the offender must register with an official designated by the agency (Department of Corrections, Department of Social and Health Services, a local division of youth services, or a local jail or juvenile detention facility) having jurisdiction over the offender. The associated agency must forward the registration information to the county sheriff of the offender's anticipated residence within three days.

All offenders who are required to register must provide a new photograph and fingerprints during the registration process.

Offenders Changing Residence Address within the Same County. When a sex or kidnapping offender changes his or her residence, the offender must send written notice of the change of address to the county sheriff within seventy-two hours of moving.

Offenders Moving to a Different County or State. Upon receiving notification that an offender is moving to a new county, the county sheriff of the old county must promptly forward the change of address information to the sheriff of the new county. In addition, when an offender notifies the sheriff of a planned out-of-state relocation, the county sheriff must forward the change of address information to the new state's designated registration agency.

Name Change. Sex offenders released from custody and subject to registration requirements are not permitted to change their names if doing so will interfere with legitimate law enforcement interests. Name changes due to changes in marital status, religious, and legitimate cultural reasons are not included in this restriction.

Any sex offender who applies to change his or her name must submit a copy of the application to the county sheriff and the Washington State Patrol at least five days prior to the entry of a name change order and must submit a copy of the court's name change order within five days after the order.

A violation of the name change requirements is a class C felony if the crime for which the individual was convicted was a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony. If the crime was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, a violation of this requirement is a gross misdemeanor.

Address Verification. Each year the county sheriff must attempt to verify the sex or kidnapping offender's registered address by mailing a verification form to the last registered address. The offender must sign and return the form within ten days.

If the offender fails to return the verification form or the offender is not at the last registered address, the county sheriff must promptly forward this information to the Washington State Patrol for inclusion in the central registry of sex offenders.

End of Duty to Register. A sex or kidnapping offender with a prior registration-eligible offense is required to register for life. A sex or kidnapping offender may petition for relief from the registration requirement after spending 10 consecutive years in the community without a new offense; however, this provision does not apply to juveniles prosecuted as adults.

Central Registry. The county sheriff must forward all sex and kidnapping registration information, including change of address information, photographs, and fingerprints, to the Washington State Patrol within three days to be included in the state central registry for sex and kidnapping offenders.

Technical Amendment. Conflicting double amendments involving public disclosure about sex offenders and kidnappers are merged. (This is a technical amendment that updates two sections of law that were amended in 1997.)

Developmentally Disabled Offenders. The agency with jurisdiction over a developmentally disabled sex or kidnapping offender must notify the Division of Developmental Disabilities within thirty days prior to the release of the offender. The jurisdictional agency and the division must assist the offender to register.

Juvenile Courts. A provision is added to require local juvenile courts to share information with local law enforcement agencies when a juvenile sex or kidnapping offender is allowed to remain in the community.

VOYEURISM CRIME

CHAPTER 221 (SHB 1441) Effective Date: June 11, 1998

Creates a class C felony of "voyeurism" under a new section in chapter 9A.44 RCW. Subsection (2) of that new section provides as follows:

> (2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy.

The same new section in chapter 9A.44 creates the following definitions:

> (a) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, or any other recording or transmission of the image of a person;
>
> (b) "Place where he or she would have a reasonable expectation of privacy" means:

(i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or

(ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

(c) "Surveillance" means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;

(d) "Views" means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity.

Also amends statute of limitations provisions at RCW 9A.04.080(1)(h) to provide that in the case of voyeurism:

> If the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

BEVERAGE CRATES AND PALLETS – THEFT AND POSSESSING STOLEN PROPERTY

CHAPTER 236 (ESSB 5769) Effective Date: June 11, 1998

Amends the third degree theft statute at RCW 9A.56.050 to provide that a person is guilty of this crime if he or she commits theft of property which:

> Includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

Amends the third degree possessing stolen property statute at RCW 9A.56.170 to provide that a person is guilty of this crime if he or she possesses:

> Ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

Amends RCW 9A.56.140 to create a rebuttable presumption of "knowledge" in a "possessing stolen property" prosecution where person is in possession of:

> Ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

RCW 9A.56.010 is amended to add the following two definitions:

> (8) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed prior to or during transport to retail outlets, manufacturers, or contractors, and affixed with language

stating “property of . . .,” “owned by. . .,” or other markings or words identifying ownership;

“Beverage crate” means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating “property of . . .,” “owned by. . .,” or other markings or words identifying ownership . . .

FIRST DEGREE RAPE

CHAPTER 242 (SSB 6518) Effective Date: June 11, 1998

Amends the first degree rape statute at RCW 9A.44.040(1)(c) to provide that “serious physical injury” includes “physical injury which renders the victim unconscious.”

DISARMING A LAW ENFORCEMENT OR CORRECTIONS OFFICER

CHAPTER 252 (HB 1309) Effective Date: June 11, 1998

Adds three new sections to chapter 9A.76 RCW as follows:

Section 1

(1) A person is guilty of disarming a law enforcement officer if with intent to interfere with the performance of the officer’s duties the person knowingly removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer’s duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

(2) Disarming a law enforcement or corrections officer is a class C felony unless the firearm involved is discharged when the person removes the firearm, in which case the offense is a class B felony.

Section 2

A person who commits another crime during the commission of the crime of disarming a law enforcement or corrections officer may be punished for the other crime as well as for disarming a law enforcement officer and may be prosecuted separately for each crime.

Section 3

Sections 1 and 2 of this act do not apply when the law enforcement officer or corrections officer is engaged in criminal conduct.

CONCEALED PISTOLS – EXEMPTING OUT-OF-STATE OFFICERS

CHAPTER 253 (EHB 1408) Effective Date: June 11, 1998

Amends subsection (1) of RCW 9.41.060 to extend the law enforcement officer concealed pistol license exemption to law enforcement officers from other states.

LIQUOR SALES TO INTOXICATED – IMBIBING BUYER BEWARE

CHAPTER 259 Effective Date: June 11, 1998

Amends RCW 66.44.200 to read as follows:

> (1) No person shall sell any liquor to any person apparently under the influence of liquor.
>
> (2) (a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.
>
> (b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.
>
> (c) A defendant's intoxication may not be used as a defense in an action under this subsection.
>
> (d) Until July 1, 2000, every establishment licensed under RCW 66.24.330 or 66.24.420 shall conspicuously post in the establishment notice of the prohibition against the purchase or consumption of liquor under this subsection.
>
> (3) An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other.

MENTALLY ILL OFFENDERS

CHAPTER 260 (ESSB 5760) Effective Date: June 11, 1998

Amends several sentencing statutes to try to effect general legislative intent which is expressed in section 1 as follows:

> It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing: (1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and (2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision.

JUVENILE PLACEMENT IN COMMUNITY FACILITIES

CHAPTER 269 (ESSSB 6445) Effective Date: September 1, 1998

LED EDITOR'S NOTE: We have excerpted below [with bracketed LED edits] the significant pertinent parts of the legislature's final bill report on this 1998 enactment.

Background [regarding preexisting law and facts]*: In September of 1997, a 17-year-old resident in a Juvenile Rehabilitation Administration (JRA) community placement group home walked away from his job and raped and murdered a 12-year-old baby-sitter during a burglary. The subsequent investigation revealed that JRA did not have a vital school record information and information regarding the juvenile's previous law enforcement encounters.*

Summary of 1998 enactment: *The Department of Social and Health Services (DSHS) must establish a process for community involvement in the siting of JRA group homes through mandated public hearings.*

TENANT PUBLIC NUISANCE ACTIVITY

CHAPTER 276 (ESHB 1223) Effective Date: June 11, 1998

Amends various sections in, and adds section to, the residential landlord-tenant statute at chapter 59.18 RCW to address "gang" and "gang-related activity" as defined under this 1998 act. Tenants who commit and permit such activity can be evicted, and in some circumstances other tenants can force the landlord to take action against the activity.

SO-CALLED "DATE RAPE" DRUG

CHAPTER 290 (ESSB 5305) Effective Date: July 1, 1998

LED EDITOR'S NOTE: We have excerpted below [with bracketed LED edits] the significant pertinent parts of the legislature's final bill report on this 1998 enactment.

Background regarding preexisting law and facts: *Flunitrazepam, brand named Rohypnol, is a potent tranquilizer which produces a sedative effect, amnesia, muscle relaxation, and a slowing of psychomotor responses. Sedation occurs 20 to 30 minutes after administration and lasts for several hours. Illicit use of the drug in the United States has reportedly been on the increase since the early 1990s. Particular concern has been expressed over the use of the drug to sedate women prior to raping them.*

Flunitrazepam is currently listed as a Schedule IV substance under the state Uniform Controlled Substances Act [RCW 69.50.210].

Summary of 1998 enactment: *[Amends RCW 69.50.401. 96.50.406 and sentencing laws in chapter 9.94A RCW.] The criminal penalties for unlawful acts involving flunitrazepam [which remains a Schedule IV drug]are made the same as the current penalties for unlawful acts involving controlled substances classified under Schedule II that are narcotics.*

LED EDITOR'S NOTE: See the April 1998 Police Chief (IACP monthly magazine) at page 37 for an article on "rohypnol" by Detective A.G. Gardiner, Jr., Prince William County Police Department, Woodbridge, Virginia. Detective Gardiner notes that in a "date rape drug" case evidence must be produced that the drug is in the victim's body. While the drug can

be found in a urine screen, time is of the essence, as the drug dissipates rapidly. Detective Gardiner also points out that laboratory technicians should be advised to lower the instrument threshold level to .02ng/mil and to search for trace flunitrazepam after all other derivatives have been eliminated.

DISABLED PERSONS' PARKING

CHAPTER 294 (2SSB 6190) Effective Date: June 11, 1998

LED EDITOR'S NOTE*:* We have excerpted below [with bracketed LED edits] the significant pertinent parts of the legislature's final bill report on this 1998 enactment.

Summary of 1998 enactments amending RCW 46.16.381, 46.61.581 and 46.63.020: *Each permit holder receives a parking placard and an identification card bearing the picture, name and date of birth of the permit holder, as well as the placard's serial number.*

Permanent permit holders are required to submit a written request to receive an additional parking placard. Temporary permit holders are not eligible to receive additional placards. For permanent permits, a five-year maximum permit renewal cycle is required. The Department of Licensing is required to verify the status of permit holders by matching their disabled permit database with available death record information. Based on the results, the database will be purged of all permits belonging to deceased permit holders.

Unauthorized use of a parking placard, license plate or picture identification card is a traffic infraction with a monetary penalty of $250. [RCW 46.16.381(8)] Obtaining a parking placard, license plate or identification card in a manner other than that established under law is a traffic infraction with a monetary penalty of $250. [RCW 46.16.381(12)] Blocking the access aisle located adjacent to a space reserved for physically disabled persons is a parking infraction with a monetary penalty of $250. [RCW 46.16.381(9)] The fine for parking in a disabled parking place is increased to $250. [RCW 46.16.381(10)] Second or subsequent violations of disabled parking laws carry the additional penalty of serving a minimum of 40 hours of community service. Failure of a property owner to sign and/or maintain parking spaces reserved for physically disabled persons is a class 2 civil infraction; and failure to ensure that the parking spaces are accessible is a class 2 civil infraction as well. [RCW 46.61.581] Knowingly providing false information on a disabled parking permit application is a gross misdemeanor with a penalty of up to one year in jail and a fine of up to $5,000 or both. [RCW 46.16.381(2)] The court may not suspend more than one half of the amount of most fines [those under subsection (8), (9), (10), and (12)].

Local law enforcement agencies are authorized to appoint volunteers with a limited commission to issue notices of infractions for violations of disabled parking laws.

Local jurisdictions are authorized to impose, by ordinance, time restrictions of no less than four hours on the use of on-street parking spots by vehicles displaying a parking placard; a minimum time limit standard for the use of on-street parking spaces reserved for physically disabled persons is set at four hours; it is required that all time restrictions be clearly posted. [RCW 46.16.380(10)]

AT-RISK YOUTH – BECCA ACT OF 1998

CHAPTER 296 (SSB 6208) Effective Date: June 11, 1998

In response to a Washington Supreme Court decision finding due process problems with existing law, this 1998 enactment clarifies the processes for admission of a child to mental health or chemical dependency treatment. The 1998 law clearly separates the procedures for: (a) voluntary outpatient and inpatient treatment, (b) parent-initiated treatment, and (c) court-authorized involuntary treatment petitions.

Other amendments clarify the authority of courts to use civil contempt powers when processing petitions on "Children in Need of Special Services," "At-Risk Youth," and truancy.

MENTALLY ILL COMMITMENT

CHAPTER 297 (2SSB 6214) Effective Date: July 1, 1998
(With some exceptions)

Makes numerous changes in the laws relating to commitment of mentally ill persons. The changes focus on increasing public safety (in part by expanding the provisions for commitment of mentally ill offenders), increasing the sharing of information, and ensuring additional opportunities for treatment of mentally ill offenders.

Among the many systemic changes is an amendment to RCW 10.77.190 providing:

> (3) If the hospital or facility designated to provide outpatient care determines that a conditionally released person presents a threat to public safety, the hospital or facility shall immediately notify the secretary of social and health services or the secretary of corrections or their designees. The secretary shall order that the conditionally released person be apprehended and taken into custody.

Also, RCW 10.77.210 is amended to provide that relevant involuntary commitment records as defined by DSHS in rule shall be made available to criminal justice agencies.

And two Criminal Records Privacy Act definitions at RCW 10.97.030 are amended. The definition of "criminal history record information" now is amended to expressly include "acquittals by reason of insanity" and "dismissals based on lack of competency;" the definition of "conviction or other disposition adverse to the subject" is amended to clarify that both a "finding of not guilty by reason of insanity" and a "dismissal by reason of incompetence" are adverse dispositions under chapter 10.97 RCW.

DRUG PARAPHERNALIA

CHAPTER 317 (HB 2772) Effective Date: June 11, 1998

LED EDITOR'S NOTE: We have excerpted below [with bracketed LED edits] the significant pertinent parts of the legislature's final bill report on this 1998 enactment.

Background regarding preexisting law*: It is currently a misdemeanor [under RCW 69.50.412] to use drug paraphernalia to produce or use illegal drugs. It is also a misdemeanor to deliver drug paraphernalia to another knowing that the paraphernalia will be used to produce or use illegal drugs. Drug paraphernalia is defined [under RCW 69.50.102] as material of any*

kind which is used, intended for use, or designed for use in producing or using illegal drugs. Drug paraphernalia includes, but is not limited to [an extensive statutory list of items].

Summary of 1998 enactment*: A new civil infraction is created [under a new section in chapter 26.28.RCW]. [Under this 1998 enactment,] it is a class I civil infraction to sell or give drug paraphernalia to another person. The maximum fine for a class I infraction is $250.*

For purposes of this new infraction, the definition of paraphernalia is [similar to] a portion of the definition that applies to the existing criminal law. Paraphernalia, as applied to the new infraction, specifically includes items used for ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body.

One element of the new infraction, however, differs from the crime of delivering paraphernalia. Under the infraction, unlike the crime, the prosecution need not prove that the offender knew that the recipient of the paraphernalia would use it in connection with illegal drugs.

The legal distribution of syringes as part of an HIV prevention program is specifically exempted from the infraction.

EMPLOYER-FURNISHED APPAREL

CHAPTER 334 (SB 6536) Effective Date: June 11, 1998

LED EDITOR'S NOTE: We have excerpted below [with bracketed LED edits] the significant pertinent parts of the legislature's final bill report on this 1998 enactment.

Summary of 1998 enactment*: If an employer requires an employee to wear a uniform, the employer must furnish or compensate the employee for such apparel.*

A uniform is defined in the alternative as: apparel of a distinctive style and quality that when worn outside the workplace clearly identifies the person as an employee of a specific employer; apparel that is marked with an employer's logo; unique apparel representing a historical time period or ethnic tradition; or formal apparel.

An employer is not required to furnish or compensate an employee for wearing apparel of a common color that conforms to a general dress code or style. "Common colors" are defined. An employer is permitted to require an employee to obtain two sets of wearing apparel to reflect the seasonal changes in weather that necessitate a change in wearing apparel.

If an employer changes the color or colors of the apparel required to be worn by any of his or her employees during a two-year period of time, the employer must furnish or compensate the affected employee or employees for the wearing apparel.

The [Department of Labor and Industries] is authorized to utilize negotiated rule-making to develop and adopt rules that define apparel that conforms to a general dress code or style. This rule-making authority expires January 1, 2000.

Personal protective equipment required for employee protection under WISHA is not defined as employee wearing apparel.

The provisions of the act do not alter the terms, conditions, or practices contained in an existing collective bargaining agreement in effect at the time this bill becomes law until such agreement expires.

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NEXT MONTH

The July 1998 **LED** will include, among other entries: (A) Part II of our two-part 1998 legislative update, and (B) the previously-promised forms for complying with the "notice of property seizure" ruling by the Ninth Circuit of the U.S. Court of Appeals in Perkins v. City of West Covina, 113 F.3d 1004 (9th Cir. 1997) **Aug '97 LED:14** (note that the U.S. Supreme Court recently granted review in the West Covina case and will likely decide the case by spring of 1999.)

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